

AMENDED IN ASSEMBLY MAY 28, 2009

AMENDED IN ASSEMBLY APRIL 14, 2009

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL

No. 456

Introduced by Assembly Member Emmerson

February 24, 2009

An act to amend Sections 1695, 1695.1, 1695.5, 1695.6, 1696, 1697, 1698, and 1699 of, ~~and to add Section 1699.5 to,~~ the Business and Professions Code, relating to dentistry.

LEGISLATIVE COUNSEL'S DIGEST

AB 456, as amended, Emmerson. Dentistry: diversion program.

The Dental Practice Act provides for the licensure and regulation of dentists by the Dental Board of California. The act requires the Dental Board of California to establish and administer a diversion program for the rehabilitation of licensees whose competency is impaired due to the abuse of drugs or alcohol, and imposes certain duties on diversion evaluation committees and the program manager related to accepting or denying licensees into, or terminating licensees from, the program, reviewing and designating treatment facilities, reviewing licensee participation, and performing other related duties. Existing law requires the board to close any investigation of a licensee whose investigation is based primarily on the self-administration or possession of certain controlled substances or drugs if the licensee enters and successfully completes a diversion program, and requires the reopening of the investigation upon withdrawal or termination from the program. Existing law requires that all participating licensees sign an agreement of understanding that withdrawal or termination from the diversion program

at a time when a *diversion evaluation* committee determines that the licensee is a threat to the public's health and safety shall result in the use of the licensee's diversion treatment records in a disciplinary or criminal proceeding. Existing law authorizes the program manager to request execution of a similar statement of understanding that alleged violations of the act by a licensee entering a diversion program may still be investigated. Existing law authorizes a *diversion evaluation* committee to convene public meetings in closed sessions if considering reports pertaining to licensees requesting or participating in a diversion program and only to the extent necessary to protect the privacy of a licensee. Existing law requires a licensee who requests participation in a diversion program to agree to cooperate with the treatment program designed by the committee and to bear all costs of the program, unless the cost is waived by the board.

This bill would declare the intent of the Legislature that the diversion program established by the Dental Board of California be implemented as *both a rehabilitative and* monitoring program for licensees whose participation is a component of a probationary or disciplinary action. The bill would delete the requirement that the board close investigations of licensees who self-administer or possess controlled substances or drugs and who enter and successfully complete a diversion program, and instead authorize the board to determine when to close or reopen investigations of those licensees, as specified. The bill would ~~authorize~~ *require* a diversion evaluation committee to report to the board's enforcement program any licensee who is denied admission into, or terminated from, the diversion program, and who is deemed by the committee to present a threat to the public or his or her own health and safety. The bill would authorize the use of that licensee's diversion records in any disciplinary or criminal proceeding, and would delete the provisions that require or authorize the execution of a statement of understanding. The bill would ~~also require~~ *authorize* the diversion evaluation committee to report to the board's enforcement program certain licensees engaging in acts of substantial noncompliance, as determined by the diversion evaluation committee *with the concurrence of the program manager, as defined*, and would authorize the use of those ~~licensees~~ *licensees'* records for purposes of discipline, as specified. The bill would also expand the committee's authority to convene a closed session meeting as applied to matters relating to a licensee requesting or participating in a diversion program, and would require a waiver of licensee confidentiality under certain circumstances,

including upon filing by the licensee of a lawsuit against the board relating to the diversion program. ~~The bill would toll the statute of limitations for filing an accusation against a licensee during the time period a licensee is participating in the diversion program, and would delete the authority of the board to waive costs attributed to a licensee participating in a program.~~ The bill would also make other nonsubstantive, technical changes to related provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1695 of the Business and Professions
2 Code is amended to read:

3 1695. It is the intent of the Legislature that the Dental Board
4 of California seek ways and means to identify and rehabilitate
5 licensees whose competency may be impaired due to abuse of, or
6 dependency on, dangerous drugs or alcohol, so that licensees so
7 afflicted may be treated and returned to the practice of dentistry
8 in a manner that will not endanger the public health and safety. It
9 is also the intent of the Legislature that the Dental Board of
10 California shall implement this legislation in part by establishing
11 a diversion program as ~~both~~ a voluntary alternative approach to
12 traditional disciplinary actions ~~and as that shall be both a~~
13 *rehabilitative* and a monitoring program for licensees whose
14 participation is a component of a probationary or disciplinary
15 action.

16 SEC. 2. Section 1695.1 of the Business and Professions Code
17 is amended to read:

18 1695.1. As used in this article:

19 (a) "Board" means the Dental Board of California.

20 (b) "Committee" means a diversion evaluation committee
21 created by this article.

22 (c) "Program manager" means the staff manager of the diversion
23 program, as designated by the executive officer of the board. The
24 program manager shall have background experience in dealing
25 with substance abuse issues.

26 SEC. 3. Section 1695.5 of the Business and Professions Code
27 is amended to read:

1 1695.5. (a) The board shall establish criteria for the acceptance,
2 denial, or termination of licensees in a diversion program. Unless
3 ordered by the board as a condition of probation or other
4 disciplinary action, only those licensees who have voluntarily
5 requested diversion treatment and supervision by a committee shall
6 participate in a diversion program.

7 (b) A licensee who is not the subject of a current investigation
8 may self-refer to the diversion program on a confidential basis,
9 except as provided in subdivision (f).

10 (c) A licensee under current investigation by the board may also
11 request entry into the diversion program by contacting the board's
12 Diversion Program Manager. The Diversion Program Manager
13 may refer the licensee requesting participation in the program to
14 a diversion evaluation committee for evaluation of eligibility.

15 (d) If the reasons for a current investigation of a licensee are
16 based primarily on the self-administration of any controlled
17 substance or dangerous drugs or alcohol under Section 1681, or
18 the illegal possession, prescription, or nonviolent procurement of
19 any controlled substance or dangerous drugs for self-administration
20 that does not involve actual, direct harm to the public, the board
21 may close the investigation without further action if the licensee
22 is accepted into the board's diversion program and successfully
23 completes the requirements of the program. If an investigation is
24 closed and the licensee withdraws or is terminated from the
25 program by a diversion evaluation committee, and the termination
26 is approved by the program manager, the investigation may be
27 reopened and disciplinary action imposed, if warranted, as
28 determined by the board.

29 (e) Neither acceptance nor participation in the diversion program
30 shall preclude the board from investigating or continuing to
31 investigate, or taking disciplinary action or continuing to take
32 disciplinary action against, any licensee for any unprofessional
33 conduct committed before, during, or after participation in the
34 diversion program.

35 (f) If a diversion evaluation committee determines that a
36 licensee, who is denied admission into the diversion program or
37 terminated from the diversion program, presents a threat to the
38 public or his or her own health and safety, the committee shall
39 report the name and license number of the licensee, along with a
40 copy of all diversion records for that licensee, to the board's

1 enforcement program. The board may use any of the records it
2 receives under this subdivision in any disciplinary or criminal
3 proceeding.

4 (g) Any licensee terminated from the diversion program for
5 failure to comply with program requirements is subject to
6 disciplinary action by the board for acts committed before, during,
7 and after participation in the diversion program. A licensee who
8 has been under investigation by the board and has been terminated
9 from the diversion program by a diversion evaluation committee
10 shall be reported by the diversion evaluation committee to the
11 board.

12 SEC. 4. Section 1695.6 of the Business and Professions Code
13 is amended to read:

14 1695.6. A committee created under this article operates under
15 the direction of the program manager. The program manager has
16 the primary responsibility to review and evaluate recommendations
17 of the committee. Each committee shall have the following duties
18 and responsibilities:

19 (a) To evaluate those licensees who request to participate in the
20 diversion program according to the guidelines prescribed by the
21 board and to make recommendations. In making the
22 recommendations, a committee shall consider the recommendations
23 of any licensees designated by the board to serve as consultants
24 on the admission of the licensee to the diversion program.

25 (b) To review and designate those treatment facilities to which
26 licensees in a diversion program may be referred.

27 (c) To receive and review information concerning a licensee
28 participating in the program.

29 (d) To consider in the case of each licensee participating in a
30 program whether he or she may with safety continue or resume
31 the practice of dentistry.

32 (e) To perform such other related duties, under the direction of
33 the board or program manager, as the board may by regulation
34 require.

35 SEC. 5. Section 1696 of the Business and Professions Code is
36 amended to read:

37 1696. Notwithstanding the provisions of Article 9 (commencing
38 with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title
39 2 of the Government Code, relating to public meetings, a committee
40 may convene in closed session to consider matters relating to any

1 licensee requesting or participating in a diversion program. A
2 meeting that will be convened entirely in closed session need not
3 comply with Section 11125 or 11126.3 of the Government Code.

4 SEC. 6. Section 1697 of the Business and Professions Code is
5 amended to read:

6 1697. Each licensee who requests participation in a diversion
7 program shall agree to cooperate with the treatment program
8 designed by the committee and approved by the program manager
9 and to bear all costs related to the program, *unless the cost is*
10 *waived by the board*. Any failure to comply with the provisions
11 of a treatment program may result in termination of the licensee's
12 participation in a program.

13 SEC. 7. Section 1698 of the Business and Professions Code is
14 amended to read:

15 1698. (a) After the committee and the program manager in
16 their discretion have determined that a licensee has been
17 rehabilitated and the diversion program is completed, the
18 committee shall purge and destroy all records pertaining to the
19 licensee's participation in a diversion program.

20 (b) Except as authorized by subdivision (f) of Section 1695.5
21 and subdivisions (c) and (d), all board and committee records and
22 records of proceedings pertaining to the treatment of a licensee in
23 a program shall be kept confidential and are not subject to
24 discovery or subpoena.

25 (c) Notwithstanding any other provision of law, the diversion
26 evaluation committee ~~shall~~ *may* report to the board's enforcement
27 program, for any licensee who is participating in the diversion
28 program as a result of his or her license being placed on probation
29 or as a result of a referral related to a board investigation pursuant
30 to subdivision (d) of Section 1695.5, all acts of substantial
31 noncompliance by the licensee as determined by the diversion
32 evaluation committee *with the concurrence of the program*
33 *manager*. The report shall be made no more than 24 hours after
34 the diversion evaluation committee makes its determination. If
35 that licensee does not successfully complete the diversion program,
36 all diversion records for that licensee shall be provided to the
37 board's enforcement program and may be used at the board's
38 discretion to discipline the licensee.

1 (d) A licensee shall be deemed to have waived any rights granted
2 by any law or regulation relating to confidentiality under the
3 program, if he or she does any of the following:

4 (1) Presents information relating to any aspect of the diversion
5 program during any stage of the disciplinary process subsequent
6 to the filing of an accusation, statement of issues, or petition to
7 compel an examination pursuant to Article 12.5 (commencing with
8 Section 820) of Chapter 1. The waiver under this paragraph shall
9 be limited to information necessary to verify or refute any
10 information disclosed by the licensee.

11 (2) Files a lawsuit against the board relating to any aspect of
12 the diversion program.

13 (3) Claims in defense to a disciplinary action, based on a
14 complaint that led to the licensee's participation in the diversion
15 program, that he or she was prejudiced by the length of time that
16 passed between the alleged violation and the filing of the
17 accusation. The waiver under this paragraph shall be limited to
18 information necessary to document the length of time the licensee
19 participated in the diversion program.

20 SEC. 8. Section 1699 of the Business and Professions Code is
21 amended to read:

22 1699. The board shall provide for the representation of any
23 person making reports to a committee or the board under this article
24 in any action for defamation for reports or information given to
25 the committee or the board regarding a licensee's participation in
26 the diversion program.

27 ~~SEC. 9. Section 1699.5 is added to the Business and Professions~~
28 ~~Code, to read:~~

29 ~~1699.5. Notwithstanding Section 1670.2, the statute of~~
30 ~~limitations relating to the filing of an accusation against a licensee~~
31 ~~shall be tolled during the time period a licensee is participating in~~
32 ~~the diversion program.~~